



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 17, 1996

Ms. Y. Qiyamah Taylor  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0973

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40424.

The City of Houston (the "city") received a request for information seeking documents related to all of the city's police command stations. The request seeks information concerning the stations' soil reports, foundation evaluations, and site drawings and specifications. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. You have submitted a representative sample of the documents at issue for our review.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision

No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

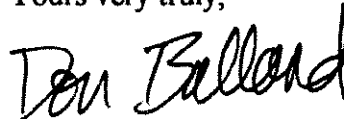
In this instance, you state that the city is currently involved in litigation with an architectural firm. The subject matter of this litigation is the design and site preparation of the Westside Command Station. You have submitted to our office the pleadings in that cause. We conclude that the city is involved in pending litigation. After reviewing the submitted documents, we also conclude that the requested documents relate to the pending litigation. The city may, therefore, withhold the requested materials from disclosure.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 40424

Enclosures: Submitted documents

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<sup>1</sup> In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Mr. Jerry J. Hamilton  
Attorney and Counselor  
6213 Washington Avenue  
Houston, Texas 77007  
(w/o enclosures)